

# United States District Court, Northern District of Illinois

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|--|---|--|----------|
| Name of Assigned Judge or Magistrate Judge | Paul E. Plunkett                                  | Sitting Judge if Other than Assigned Judge |          |
| CASE NUMBER                                | 01 C 1056   | DATE                                       | 9/3/2003 |
| CASE TITLE                                 | Gregory Stalling vs. Union Pacific RR. Co., et al |  |          |

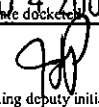
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

|      |                                     |  |
|------|-------------------------------------|--|
| (1)  | <input type="checkbox"/>            | Filed motion of [ use listing in "Motion" box above.]  |
| (2)  | <input type="checkbox"/>            | Brief in support of motion due _____.  |
| (3)  | <input type="checkbox"/>            | Answer brief to motion due _____. Reply to answer brief due _____.   |
| (4)  | <input type="checkbox"/>            | Ruling/Hearing on _____ set for _____ at _____.  |
| (5)  | <input type="checkbox"/>            | Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.  |
| (6)  | <input type="checkbox"/>            | Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.   |
| (7)  | <input type="checkbox"/>            | Trial[set for/re-set for] on _____ at _____.   |
| (8)  | <input type="checkbox"/>            | [Bench/Jury trial] [Hearing] held/continued to _____ at _____.   |
| (9)  | <input type="checkbox"/>            | This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]<br><input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).   |
| (10) | <input checked="" type="checkbox"/> | [Other docket entry] <b>ENTER MEMORANDUM OPINION AND ORDER: Defendant Union Pacific's objection to Magistrate Judge Nolan's July 22, 2003 discovery order is overruled. Union Pacific has ten days from the date of this Memorandum Opinion and Order to produce the requested documents or seek a protective order from Magistrate Judge Nolan in accordance with this Opinion.</b> |
| (11) | <input checked="" type="checkbox"/> | [For further detail see order attached to the original minute order.]  |

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| <input type="checkbox"/>  | No notices required, advised in open court. | <div style="text-align: center;">             U.S. DISTRICT COURT<br/>             CLERK<br/>             03 SEP - 3 PM 3:15<br/>             FILED FOR DOCKETING           </div> | number of notices  | <div style="text-align: center;"> <b>Document Number</b><br/><br/>             83           </div> |
| <input type="checkbox"/>  | No notices required.                        |  | SEP 04 2003<br><small>one docketed</small>   |  |
| <input type="checkbox"/>  | Notices mailed by judge's staff.            |  | <br>docketing deputy initials |  |
| <input type="checkbox"/>  | Notified counsel by telephone.              |  | date mailed notice   |  |
| <input checked="" type="checkbox"/>   | Docketing to mail notices.                  |  | mailing deputy initials  |  |
| <input type="checkbox"/>  | Mail AO 450 form.                           |  |  |  |
| <input checked="" type="checkbox"/>   | Copy to judge/magistrate judge.             |  |  |  |
| <div style="display: flex; justify-content: space-between;"> <div>TBK</div> <div>courtroom deputy's initials</div> </div> |   | Date/time received in central Clerk's Office   |  |  |

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED  
SEP 04 2003

GREGORY STALLING, Special  
Administrator of the Estates of BECKY  
R. STALLING and RYAN NICHOLE  
STALLING,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY  
and NATIONAL RAILROAD PASSENGER  
CORPORATION d/b/a AMTRAK

Defendants.

No. 01 C 1056

Paul E. Plunkett, Senior Judge

**MEMORANDUM OPINION AND ORDER**

On July 22, 2003, Magistrate Judge Nolan issued an order compelling Union Pacific ("UP") to produce its claims operations reference guide. UP objects to that order on the grounds that the guide is protected by the work product doctrine. For the reasons set forth below, UP's objection is overruled.

**Discussion**

We can modify Magistrate Judge Nolan's discovery order only if it is "clearly erroneous or contrary to law." FED. R. CIV. P. 72(a). UP says that it is because the guide she ordered them to produce is protected by the work product privilege. The work product privilege is codified in

Federal Rule of Civil Procedure (“Rule”) 26, which exempts from disclosure “documents . . . prepared in anticipation of litigation or for trial.” FED. R. CIV. P. 26(b)(3). “The work product rule does not[, however,] come into play merely because there is a remote prospect of future litigation.” Binks Mfg. Co. v. National Presto Indus., Inc., 709 F.2d 1109, 1118 (7<sup>th</sup> Cir. 1983) (internal quotation marks and citation omitted). Rather, a document is deemed to have been prepared in anticipation of litigation only if the “nature of the document and the factual situation in the particular case” suggest that the document was “prepared . . . *because* of the prospect of litigation.” Id. at 1119 (internal quotation marks and citation omitted).


The UP claims operations reference guide is a comprehensive reference tool for UP claims representatives. It discusses the claims representatives’ duties, which include investigating and settling most of the claims asserted against UP, in great detail. Of course, any claim asserted against the railroad may ripen into litigation, so the manual discusses that contingency. But that does not transform what is essentially a training manual for UP risk management employees into attorney work product. See id. (“The mere contingency that litigation may result is not determinative. If in connection with an accident or an event, a business entity in the ordinary course of business conducts an investigation for its own purposes, the resulting investigative report is produceable in civil pre-trial discovery.”); Auto Owners Ins. Co. v. Totaltape, Inc., 135 F.R.D. 199, 202-03 (M.D. Fla. 1990) (holding that insurer’s claims manual and guidelines for business interruption claims were not work product because they were created in the ordinary course of business). Absent evidence that the prospect of this or some other litigation motivated UP to create the guide, and it has provided none, the work product doctrine does not exempt it from discovery. UP’s privilege objection is, therefore, overruled.

Even if the guide must be produced, UP requests that the Court enter a protective order limiting its dissemination. Rule 26(c) authorizes the Court to enter such an order only if the party seeking the order "certifi[es] that [it] has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." UP's motion contains no such certification. Unless and until UP's informal efforts to resolve this issue with plaintiff fail, its motion for a protective order is not ripe.

### **Conclusion**

For the reasons set forth above, UP's objection to Magistrate Judge Nolan's July 22, 2003 discovery order is overruled. UP has ten days from the date of this Memorandum Opinion and Order to produce the requested documents or seek a protective order from Magistrate Judge Nolan in accordance with this Opinion.

**ENTER:**

  
**UNITED STATES DISTRICT JUDGE**

**DATED:** 9-3-03